



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Gaurang K. Shah, et al.  
Serial No.: 09/965,592  
Filing Date: September 26, 2001  
Examiner: Ramy M. Osman  
Group Art Unit: 2157  
Title: APPARATUS AND METHOD FOR RE-DIRECTING  
A CLIENT SESSION

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

REQUEST FOR PRE-APPEAL BRIEF REVIEW

In response to the Advisory Action mailed February 15, 2006, Applicant respectfully requests a Pre-Appeal Brief review of this Application so that the rejection of the claims and the objections to the Application can be reconsidered prior to submission of an Appeal Brief.

REMARKS

This Request for Pre-Appeal Brief Review is being filed in accordance with the provisions set forth in the Official Gazette Notices of July 12, 2005 and January 10, 2006. Pursuant to the Official Gazette Notices, this Request for Pre-Appeal Brief Review is being filed concurrently with a Notice of Appeal. The Applicant respectfully requests reconsideration of the Application in light of the remarks set forth below.

Claims 1, 7-13, 15-17, and 19 currently stand rejected under 35 U.S.C. §103(a) as being unpatentable over Brendel, et al. in view of Swildens, et al. Claims 2-6, 14, 18, and 20 currently stand rejected under 35 U.S.C. §103(a) as being unpatentable over Brendel, et al. in view of Swildens, et al. and further in view of Kitai, et al. In the prosecution of the present Application, the Examiner's rejections and assertions contain clear errors of law, including a failure to establish a prima facie case of obviousness. To assist the Panel in the review of this Request for Pre-Appeal Brief Review, Applicant submits the following brief summary for consideration.

In the Advisory Action of February 15, 2006 and the Final Action of November 21, 2005, the Examiner indicates that the Brendel, et al. patent discloses a IP address of 230.101.17.200 cached at a client browser 10 that identifies a website domain of 230.101.17.x which also identifies the domain of servers 36, 36A, 36B, and 36C in a server farm 38. The Examiner states that a selected server 36 of the Brendel, et al. patent has an IP address of 230.101.17.101 that can be identified as belonging to the domain of 230.101.17.x. and thus satisfies the 'information identifying' requirement of Claim 1. However, the IP address of 230.101.17.200 cached in the client browser of the Brendel, et al. patent provides no identification information for the client browser 10 as to any

server in the server farm 38 let alone the existence of a server farm 38 or any server therein. The Examiner improperly asserts that the IP address of a load balancing router 32 identifies a local server 36 when the local server 36 has its own unique IP address associated therewith. In the Brendel, et al. patent, the only identification information maintained by the client browser 10 is the IP address for its load balancing router 32. The client browser 10 of the Brendel, et al. patent only knows the existence of load balancing router 32 through the cached IP address and does not contain any information as to the existence of server farm 38 or servers 36 therein. The portion of the Brendel, et al. patent cited by the Examiner merely discloses caching of the IP address for a load balancing router 32 by its client browser 10. The Brendel, et al. patent does not disclose a capability for its client browser 10 to cache an IP address or any other information associated with a server 36.

Independent Claims 1, 13, and 17 recite in general that one gateway be selected by a load balancer and a re-direct message including information identifying the selected gateway be sent to a client terminal by the load balancer. The Examiner has failed to cite any language in the Brendel, et al. patent that its client browser 10 receives any information associated with any server 36 within the server farm 38 let alone information identifying a selected one of the servers as provided by the claimed invention. Moreover, at no time does the load balancing router 32 of the Brendel, et al. send a re-direct message to the client browser 10 that contains any information identifying any of the servers in the server farm 38 let alone a selected server 36 as required by the claimed invention. None of the IP addresses for any of the servers in the server farm 38 is provided by the load balancing router 32 of the Brendel, et al. patent to the client browser 10 as would be required to read on the claimed invention. Thus, the

Brendel, et al. patent lacks an ability to provide a re-direct message from a load balancer to a client terminal where the re-direct message includes information identifying a selected one of a plurality of gateways. Moreover, the Swildens, et al. and Kitai, et al. patents do not include any additional disclosure combinable with the Brendel, et al. patent that would be material to patentability of these claims.

Most notable of the legal errors present in the examination of the Application is a failure of the Final Office Action of November 21, 2005 to establish a prima facie case of obviousness for the claims in the Application rejected under 35 U.S.C. §103(a). There has been no mention of the three criteria for a prima facie case of obviousness as spelled out in M.P.E.P. §2143. The Examiner has not cited any language from the prior art that would suggest that the Brendel, et al. patent can be combined with any of the Swildens, et al. and Kitai, et al. patents. The Examiner only provides a baseless subjective and conclusory "it would have been obvious" statement for combining the Brendel, et al. patent with the Swildens, et al. and Kitai, et al. patents without providing any objective reasoning or citing any evidence of record to support such a position. The Examiner has not provided any reasons how the proposed combination of the Brendel, et al., Swildens, et al. and Kitai, et al. patents with the other cited references would have any expectation of success let alone a reasonable expectation of success. As shown above, the proposed combination fails to teach or suggest all of the claim limitations. As a result, the Examiner has failed to establish a prima facie case of obviousness in this Application.

CONCLUSION

Applicant has now made an earnest attempt to place this Application in condition for allowance. For the foregoing reasons and for other apparent reasons, Applicant respectfully requests allowance of all pending claims.

The Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

Respectfully submitted,

BAKER BOTTS L.L.P.

Attorneys for Applicant

A handwritten signature in black ink, appearing to read "Charles S. Fish", with a stylized flourish at the end.

Charles S. Fish

Reg. No. 35,870

March 21, 2006

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